

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 677
Title 14, California Code of Regulations
Re: Dog Training and Organizational Field Trial Permits

- I. Date of Initial Statement of Reasons: November 6, 2003
- II. Date of Pre-adoption Statement of Reasons: February 23, 2004
- III. Date of Final Statement of Reasons: April 15, 2004
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 4, 2003
Location: Sacramento
 - (b) Discussion Hearing Date: February 6, 2004
Location: Long Beach
 - (c) Adoption Hearing: Date: April 1, 2004
Location: Sacramento
- V. Update:

Description of Modification of Originally Proposed Language of Initial Statement of Purpose:

Originally proposed language for Subsection 677(a), addressing dog training where no birds are released or taken, stated that, for the purposes of this section, training a dog on wild or domestically reared game birds is not “take”, so long as no birds are killed or injured. The proposed new language included in the Pre-adoption statement deleted this reference to “take”, and provided that a person may train dogs to retrieve, or to point or flush game birds, or may participate in field trials or similar events related to these activities, at any time of year from sunrise to sunset if no wild birds are captured, injured, or killed and if no firearms or other means of take are possessed in the field. The proposed language for Subsection 677(a) was also modified to clarify that dogs may not be allowed to pursue birds that are protected under state or federal law.

Originally proposed language for Subsection 677(b)(4)(A), which addresses marking of birds prior to release, stated that all domestically reared game birds used for dog training or field trials shall be marked with streamers, coloring, or other conspicuous material prior to their release, but provided that the Regional Manager could exempt all or portions of a Region from this requirement. The proposed amended language provided that the Regional Manager may require that released game birds shall be so marked, if the Department determines that there is a need to distinguish them from other game birds at a particular location. Other minor modifications were made for clarity.

In addition to the modifications to the originally proposed language described above, at the Adoption Hearing the Commission deleted the prohibition on the possession of firearms or other means of take when training dogs on wild game birds under circumstances where a person is not legally hunting or is not taking domestically reared birds as provided in this section.

Reasons for Modification of Originally Proposed Language of Initial Statement of Reasons:

Modifications included in the Pre-adoption Statement to the originally proposed language were made to clarify that it is a violation to be hunting under the pretense of dog training, and to require the marking of domestically reared game birds before release only in those locations where the Department determines that this is necessary to distinguish them from wild birds.

The modification by the Commission at the Adoption Hearing was made because it was felt that the prohibition on possession of firearms or other means of take was unnecessary, since other regulations exist that adequately prevent people from hunting under the guise of dog training.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

Responses to public comments received were included in the Pre-adoption Statement of Reasons. In addition, the following members of the public supported the regulation changes, as proposed:

Stephanie P. Lane – Director, Canine Legislation, American Kennel Club
Two (2) letters dated January 30, 2004 & March 12, 2004

Bill Daley – National Retriever Club, Inc. and Southern Calif. Retriever Club, Inc.

Jerel Kratt – Bakersfield, California
Wendy Johnson - Carmel Valley, California
Samantha Uhlenhake – Noble, Oklahoma

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No change Alternative:

If the existing language in Section 677 is not changed, these regulations will remain unnecessarily complex and restrictive.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulation changes are sufficiently minor that any economic impact, positive or negative, would not be significant.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Approximately 1,000 dog training permits and 100 field trial permits are sold each year. Section 3510, of the Fish and Game Code, established fees for these permits, and was deleted in 2002. If the requirement for these permits was retained, income to the Department, through a fee structure based on a rough estimate of staff time needed to print and issue the permits, would be about \$12,000 per year. However, since these costs would no longer occur under the proposal that the permits be deleted, there should be no net loss to the Department.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None

- (f) Programs mandated on Local Agencies or School Districts:

None

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None

(h) Effect on Housing Costs:

None

Updated Informative Digest/Policy Statement Overview

Sections 3509 and 3510 of the Fish and Game Code, which addressed dog training and field trials using released domesticated game birds, were repealed in 2002. Section 3508 was amended to provide that the Fish and Game Commission authorize procedures for training dogs using game birds. These changes to the Fish and Game Code were made because of complaints by dog training and field trial enthusiasts that the existing code sections were difficult to understand, overly complicated, and unnecessarily restrictive. One of the deleted code sections established prices for dog training and organizational field trial permits.

The changes being proposed to Section 677 of Title 14 are intended to provide reasonable and clear regulations addressing these activities. In addition, the proposed revised language deletes the requirement for the permits, requires that the Department be notified before field trials and hunt tests occur, requires that game birds be marked before release (if the Department determines that this is necessary in specific locations), and that the carcasses of pheasants and chukars used in dog training be marked with a seal obtained from the Department.

The amended language included in the Pre-adoption Statement was added and/or deleted to clarify that it is a violation to be hunting under a pretense of dog training, to clarify that dogs may not be allowed to pursue birds protected by state or federal law, and to require the marking of domestically reared game before release only in those locations where the Department determines that this is necessary to distinguish them from wild birds.

In addition to the modifications to the originally proposed language described above, at the Adoption Hearing the Commission deleted the prohibition on the possession of firearms or other means of take when training dogs on wild game birds under circumstances where a person is not legally hunting or is not taking domestically reared birds as provided in this section.

The modification by the Commission at the Adoption Hearing was made because it was felt that the prohibition on possession of firearms or other means of take was unnecessary, since other regulations exist that adequately prevent people from hunting under the guise of dog training.

The following is a summary of the changes proposed for Section 677, Title 14, CCR:

- Clarify that it is not a violation to train dogs to retrieve, or to point or flush game birds at any time of year from sunrise to sunset, if no wild birds are captured, killed, or injured.

- Clarify that dogs may not be allowed to pursue any birds that have special protection under California or federal law.
- Delete the requirement that permits be purchased to release and take game birds for dog training and field trials.
- Provide that bobwhite quail, coturnix quail, domestic pigeons, and domestically reared pheasants, chukars, Hungarian partridges, and captive-reared mallard ducks may be released and taken when engaged in dog training or organizational field trials, under the following stipulations:
 1. Each person taking game birds possess a hunting license and upland game bird stamp, if appropriate.
 2. Persons releasing and/or taking game birds in accordance with this section during organized field trials or hunt tests shall notify the Department at least three business days before these activities occur.
 3. Domestically reared game birds may be taken only on the day they are released.
 4. All domestically reared game birds shall be marked prior to release, if the Department determines that this is necessary to distinguish them from wild birds in a particular location, and carcasses of chukars and pheasants shall be marked with seals obtained from the Department.
 5. The Department may inspect all birds prior to release, and no birds may be released if the Department determines that such releases may have significant potential to transmit diseases to wild bird populations.

ADDENDUM TO FINAL STATEMENT OF REASONS FOR:

Section 677

Title 14, California Code of Regulations

Re: Dog Training and Organizational Field Trial Permits

Additional Public Comments and Department Responses:

Virginia Handley opposed Commissioner Flores' amendment and she supported the three-day notice period to enforcement.

Department response: The justification for the amendment proposed by Commissioner Flores was provided in the Final Statement. Regarding the three-day notice period, the proposed regulations require that persons releasing and/or taking game birds in accordance with Section 677 during organized field trials or hunt tests notify the Department at least three days prior to the event. The proposed regulations do not require this notification by individual dog trainers, because that was deemed to be overly restrictive and to require an unreasonable level of planning.

Camilla Fox did not support the proposed regulatory changes and noted that it is very apparent that the Commission gives full attention to hunters and fishermen and that the same level of attention is not given to the animal rights community.

Department response: The Commission makes a serious effort to allow the views of all individuals to be heard, to consider these views, and to balance various interests when considering regulations.